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6 | Attorneys for Plaintiffs

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11 HONEY McEWAN, SUSAN
12 CAMERON, and LILLIAN GILDEN,
individually and on behalf of all others
similarly situated,

13 Plaintiffs.

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16 OSP GROUP, L.P., a Delaware
17 Limited Partnership, OSP GROUP
18 MERCHANT, INC., a Delaware
19 Corporation, OSP GROUP, INC., a
Delaware Corporation, OSP GROUP,
LLC, a Delaware Limited Liability
Company, JESSICA LONDON, INC., a
Delaware corporation; and DOES 2-50,
inclusive,

21 | Defendants

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CASE NO. 3:14-cv-02823 BEN (WVG)

**THIRD AMENDED CLASS
ACTION COMPLAINT FOR
VIOLATION OF THE
CALIFORNIA INVASION OF
PRIVACY ACT
[Cal. Penal Code § 630 *et seq.*]**

GENERAL ALLEGATIONS

2 1. Plaintiff Honey McEwan (“McEwan”) is an individual residing in
3 Healdsburg, California. Plaintiff Susan Cameron (“Cameron”) is an individual
4 residing in Orange, California. Plaintiff Lillian Gilden (“Gilden”) is an individual
5 residing in Porterville, California. McEwan, Cameron, and Gilden are collectively
6 referred to as “Plaintiffs.”

7 2. Plaintiffs are informed and believe and thereon allege that defendant
8 OSP Group, L.P. is a Delaware limited partnership that does business in this judicial
9 district.

10 3. Plaintiffs are informed and believe and thereon allege that defendant
11 OSP Group Merchant, Inc. is a Delaware corporation that does business in this
12 judicial district.

13 4. Plaintiffs are informed and believe and thereon allege that defendant
14 OSP Group, Inc. is a Delaware corporation that does business in this judicial district.

15 5. Plaintiffs are informed and believe and thereon allege that defendant
16 OSP Group, LLC is a Delaware limited liability company that does business in this
17 judicial district.

18 6. Upon the filing of the complaint in this action, plaintiffs were ignorant
19 of the true name of the defendant designated by the fictitious name of DOE 1.
20 Plaintiffs have since discovered that the true name of the defendant originally
21 designated as DOE 1 is Jessica London, Inc., a Delaware corporation (“Jessica
22 London”), and this Third Amended Complaint substitutes the true name for the
23 fictitious name. Plaintiffs are informed and believe and thereon allege that
24 defendant Jessica London is a Delaware corporation that does business in this
25 judicial district.

26 7. Plaintiffs do not know the names of the defendants sued as DOES 2
27 through 50 but will amend this complaint when that information becomes known.
28 Plaintiffs allege on information and belief that each of the DOE defendants is

1 affiliated with one or more of the named defendants in some respect and is in some
 2 manner responsible for the wrongdoing alleged herein, either as a direct participant,
 3 or as the principal, agent, successor, alter ego, or co-conspirator of one or more
 4 named defendants. For ease of reference, plaintiffs will refer to the named
 5 defendants and the DOE defendants collectively as “defendants.”

6 8. Defendants OSP Group, L.P., OSP Group Merchant, Inc., OSP Group,
 7 Inc., and OSP Group, LLC removed this lawsuit to this Court pursuant to 28 U.S.C.
 8 § 1332(d) (CAFA jurisdiction). Venue is proper in this judicial district because
 9 defendants have not designated principal offices in California and at least some of
 10 the events giving rise to the class claims occurred in this judicial district.

11 9. During the applicable statute of limitations, while plaintiff McEwan
 12 resided in and was physically present in the State of California, and while she was
 13 using a cordless telephone, McEwan had one or more telephone communications
 14 with defendants’ representatives.

15 10. During the applicable statute of limitations, while plaintiff Cameron
 16 resided in and was physically present in the State of California, and while she was
 17 using a landline telephone, Cameron had one or more telephone communications
 18 with defendants’ representatives in which she provided confidential personal and
 19 financial information to defendants, including her address and credit card
 20 information.

21 11. During the applicable statute of limitations, while plaintiff Gilden
 22 resided in and was physically present in the State of California, and while she was
 23 using a cellular telephone, Gilden had one or more telephone communications with
 24 defendants’ representatives.

25 12. Plaintiffs allege on information and belief that defendants secretly
 26 recorded these communications. Defendants did not notify McEwan, Cameron, or
 27 Gilden that defendants were recording the communications, nor did defendants
 28 obtain plaintiffs’ consent.

1 13. Plaintiffs allege on information and belief that, during the applicable
2 statute of limitations, defendants routinely recorded incoming and outgoing
3 telephone communications with customers who resided in and were physically
4 present in the State of California without notifying the customers that the
5 communications were being recorded.

6 14. California Penal Code § 632 prohibits the recording of a confidential
7 communication made by telephone without the consent of all parties to the
8 communication. California Penal Code § 632.7 prohibits the recording of any
9 communication without the consent of all parties where one of the parties to the
10 communication is using a cordless or cellular telephone.

11 15. Defendants' practice of surreptitiously recording telephone
12 communications violates Penal Code §§ 632 and 632.7.

CLASS ACTION ALLEGATIONS

16. Plaintiffs bring this lawsuit as a class action under Fed. R. Civ. P. 23.
17. The class (“Class”) plaintiffs seek to represent is defined as follows: “All natural
18. persons who, while residing in and physically present in the State of California, and
19. during the applicable statute of limitations: (1) participated in at least one telephone
20. communication with a live representative of defendants that was recorded by
21. defendants; (2) were not notified by defendants that their telephone communication
22. was being recorded; and (3) are identifiable through records held by defendants
23. and/or third parties. Excluded from the class are all employees of defendants, all
24. attorneys and employees of defendants’ counsel, attorneys and employees of
plaintiff’s counsel, and the judicial officers to whom this matter is assigned and their
respective court staff.”

25 17. Ascertainability. The members of the Class may be ascertained by
26 reviewing records in the possession of defendants and/or third parties, including
27 without limitation defendants' call records, customer records, call lists, and the
28 secret recordings themselves.

18. Common Questions of Fact or Law. There are questions of fact or law
1 that are common to the Class, which predominate over individual issues. These
2 common questions include, without limitation: (1) defendants' policies and
3 procedures for recording telephone communications with customers in California;
4 (2) whether defendants notify their customers that the customers' telephone
5 communications are recorded; (3) whether defendants' conduct constitutes a
6 violation of Penal Code §§ 632 and/or 632.7; (4) defendants' recordkeeping
7 practices; and (5) the appropriate remedies for defendants' conduct.

9 19. Numerosity. The Class is so numerous that joinder of all Class
10 members would be impracticable. Plaintiffs are informed and believe that the Class
11 consists of at least 100 members.

12 20. Typicality and Adequacy. Plaintiffs' claims are typical of the claims of
13 the Class members. Like the other Class members, plaintiffs participated in one or
14 more telephone communications with defendants that were secretly recorded.
15 Plaintiffs have no interests that are adverse to those of the other Class members.
16 Plaintiffs will fairly and adequately protect the interests of the Class members.

17 21. Superiority. A class action is superior to other methods for resolving
18 this controversy. On information and belief, because defendants' recording activity
19 is not disclosed, class members are unlikely to be aware of their claims. Moreover,
20 because the damages suffered by each Class member are low, the expense and
21 burden of individual litigation would make it impracticable for members of the
22 Class to redress the wrongs done to them. Class certification will also conserve
23 judicial resources and avoid the possibility of inconsistent judgments.

FIRST CAUSE OF ACTION

(Violation of Cal. Penal Code § 630 *et seq.*)

26 || 22. Plaintiffs incorporate by reference all of the preceding paragraphs.

27 23. Plaintiffs allege on information and belief that, within the applicable
28 statute of limitations, plaintiffs and the Class members, while residing in and

1 physically present in the State of California, participated in telephone
 2 communications with live representatives of defendants, which communications
 3 were recorded by defendants without the consent of plaintiffs and the Class
 4 members. Defendants did not notify McEwan, Cameron, Gilden, or other Class
 5 members that the communications were being recorded.

6 24. Penal Code § 632 prohibits the intentional recording of a confidential
 7 communication without the consent of all parties to the communication. Plaintiff
 8 Cameron and other Class members who used a landline telephone had an objectively
 9 reasonable expectation that their telephone communications were confidential and
 10 were not being recorded. There were no beeps, warnings, or recording disclosures
 11 played that would lead plaintiffs and the Class members to believe that their
 12 communications were being recorded. Defendants violated § 632 by intentionally
 13 recording the communications with plaintiff Cameron and other Class members who
 14 used a landline telephone without obtaining their consent.

15 25. Penal Code § 632.7 prohibits the intentional recording of a
 16 communication without the consent of all parties where at least one of the parties to
 17 the communication is using a cellular or cordless telephone. Defendants violated
 18 § 632.7 by intentionally recording the communications with plaintiffs McEwan,
 19 Gilden, and other Class members who used a cordless or cellular telephone without
 20 obtaining their consent.

21 26. As a result of defendants' conduct, plaintiffs and the Class members
 22 have been injured. Accordingly, plaintiffs and the Class members are entitled to
 23 statutory damages of \$5,000 per recorded communication pursuant to Penal Code
 24 § 637.2(a)(1) and injunctive relief to halt the secret recording of communications
 25 pursuant to Penal Code § 637.2(b).

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PRAYER

WHEREFORE, plaintiffs pray for judgment against defendants as follows:

1. For statutory damages as alleged herein;
2. For injunctive relief as alleged herein;
3. For costs of suit;
4. For pre-judgment interest; and
5. For such other relief as the Court may deem just and proper.

8 Dated: March 29, 2016

DOSTART HANNINK & COVENEY LLP

10 /s/ James T. Hannink

11 JAMES T. HANNINK
12 Attorneys for Plaintiffs

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